



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-872

CERTAIN COMPACT FLUORESCENT REFLECTOR LAMPS, PRODUCTS CONTAINING SAME AND COMPONENTS THEREOF

COMMISSION DETERMINATION TO REVIEW IN PART A FINAL INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR BRIEFING ON THE ISSUES UNDER REVIEW AND ON REMEDY, THE PUBLIC INTEREST, AND BONDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”), finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this

matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 5, 2013, based on a complaint filed by Neptun Light, Inc., and Mr. Andrzej Bobel (together, "Neptun") to consider alleged violations of section 337 by reason of infringement of claims 1, 2, 10, and 11 of U.S. Patent No. 7,053,540 ("the '540 patent"). 78 *Fed. Reg.* 14357-58. The Commission's notice of investigation named as respondents Maxlite, Inc. ("Maxlight"); Satco Products, Inc. ("Satco"); Litetronics International, Inc. ("Litetronics") (together, "Respondents"); and Technical Consumer Products, Inc. ("TCP"). *Id.* at 14358. The Office of Unfair Import Investigations did not participate in this investigation. *Id.*

On June 10, 2013, Neptun and TCP moved to terminate the investigation with respect to TCP on the basis of a settlement agreement. The motion was granted on June 11, 2013. Order No. 20, *not reviewed* (July 8, 2013).

On February 3, 2014, the ALJ issued his final initial determination ("ID"), finding a violation of section 337. Specifically, the ALJ found that Maxlite and Satco violated section 337 with respect to claims 1, 2 and 11 of the '540 patent, and that Litetronics violated section 337 with respect to claims 1, 2 and 10 of the '540 patent. The ALJ recommended that a limited exclusion order issue against the infringing products of Maxlite, Satco, and Litetronics. He did not recommend the issuance of any cease and desist orders.

On February 18, 2014, Respondents petitioned for review of several of the ALJ's findings. Also on February 18, 2014, Neptun contingently petitioned for review of the

ALJ's finding that Neptun had not made a sufficient showing on the economic prong of the domestic injury requirement through 19 U.S.C. § 1337(a)(3)(C). On February 26, 2014, Neptun and Respondents opposed each other's petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ALJ's findings on the economic prong of the domestic industry requirement, the ALJ's construction of "mating opening," and the ALJ's findings on infringement. The Commission has determined not to review the remaining findings in the ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in briefing on the following issues:

1. Whether Neptun's asserted investments and expenditures were made "with respect to the articles protected by the ['540] patent" within the meaning of 19 U.S.C. § 1337(a)(3). In doing so, please address the following: "Commission precedent requires that expenses be allocated to each of the products covered by the asserted patents." *Certain Computer Forensic Devices and Products Containing Same*, Inv. No. 337-TA-799, USITC Pub 4408, Initial Determination at 10 (July 2013) (unreviewed in relevant part). Please provide a reasonable estimate, based on the evidence of record, of the portion of Neptun's investments that are associated with articles protected by the '540 patent. Explain whether, and to what extent, Neptun's books and records enable an accounting of expenditures specific to the articles protected by the '540 patent.

2. Please explain why (or why not) the relevant portion of Neptun's asserted investments and expenditures related to the articles protected by the '540 patent are "significant" within the meaning of 19 U.S.C. § 1337(a)(3)(A) and (B) in the context of the company, the industry, or the realities of the marketplace. In doing so, please identify the appropriate methodology for assessing significance here, and explain how the methodology and the record evidence shows (or does not show) that the investments with respect to the articles protected by the '540 patent are significant.
3. Whether Neptun made "substantial investment" in "engineering" or "research and development" with respect to the exploitation of the '540 patent within the meaning of 19 U.S.C. § 1337(a)(3)(C). Which of Neptun's asserted expenses constitute investments that fall under 19 U.S.C. § 1337(a)(3)(C), such as investments in engineering, research and development, or licensing? Please identify and provide a reasonable estimate, based on the evidence of record, of the portion of these expenses that are associated with the exploitation of the '540 patent. Please explain, qualitatively, how these expenses and the underlying activities that these expenses reflect—relate to exploitation of the '540 patent. Please identify any such investments and explain why (or why not) such investments are substantial in the context of the company, the industry, or the realities of the marketplace.
4. Whether "a hole or aperture through which the light source base is mated with the ballast housing" is an appropriate construction for the term "mating opening" in the '540 patent. Additionally, using this construction, explain how Respondents' accused products satisfy (or do not satisfy) the "mating opening" limitation, either literally or under the doctrine of equivalents.

5. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said cavity having a first circumferential flange" and "the first circumferential flange of the reflector cavity." Specifically, identify the evidence showing that the asserted cavity and the first circumferential flange of the accused products have a sufficient relationship such that there is a cavity "having a first circumferential flange" and that the first circumferential flange is "of the reflector cavity."
6. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said base being inside said defined cavity of said reflector and located inside said mating opening." Specifically, identify the evidence showing whether or not the light source base is located inside the reflector's defined cavity and located inside the mating opening either literally or under the doctrine of equivalents.
7. Please explain how Respondents' accused products satisfy (or do not satisfy) the limitations "said base having a second circumferential flange" and "the second circumferential flange of the light source base." Specifically, please identify the evidence showing whether or not the asserted base and second circumferential flange have a sufficient relationship such that there is a base "having a second circumferential flange" and that the second circumferential flange is "of the light source base."

The parties have been invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26,

2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are also requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the '540 patent expires and the HTSUS numbers under which the accused products are imported. The entirety of the parties' written submissions must not exceed 50 pages, and must be filed no later than close of business on April 22, 2014. Reply submissions must not exceed 25 pages, and must be filed no later than the close of business on April 29, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-872") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures,*

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: April 8, 2014

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